Heyward Rashard Truesdale
#313568
Lieber Corr. Inst. Cooper B-54
P.O. Box 205
Ridgeville, S.C. 29472

September 19, 2016

Hon. Daniel E. Shearouse, Clerk
Supreme Court of South Carolina
P.O. Box 11330
Columbia, S.C. 29211



Re: Supplemental Pro se Johnnson Petition
Heyward R. Truesdale v. State
Appellate Case No. 2016-000064

Dear Mr. Shearouse,

Enclosed please find my Supplemental Pro se Johnson Brief for filing with the Court.

Thank you for your assistance in this matter.

Sincerely,

Heyward R. Truesdale

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lancaster County

Honorable R. Knox McMahon, Circuit Court Judge

HEYWARD R. TRUESDALE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT,

APPEALLATE CASE NO 2016-000064

SUPPLEMENTAL PRO SE JOHNSON PETITION FOR WRIT OF CERTIORARI



Heyward R. Truesdale
SCDC#313568
Lieber Corr. Inst. Cooper B-
P.O. Box 205
Ridgeville, S.C.
Pro se Petitioner

I. Trial counsel was ineffective in entering photographs of loaded 9-millimeter clip, box of cartridges and the center console of vehicle shooting victim was driving, denied Petitioner right to final closing argument to the jury.

During cross-examination of State's witness, Mr. Jeff Steele, investigator [crime scene] with the Lancaster County Sheriff's Office, Mr. Frick [trial counsel] entered into evidence three photographs received as Defendant's Exhibits 1-3. App. 281, L.10 - App. 282, L.11. Photograph of 9-millimeter clip [Defendant's No. 2], App. 282, LL. 8-10. Photograph of box of cartridges - Defendant's No. 1 and photograph of center console of van driven by shooting victim Douglas Lewis - Defendant's No. 3.

Evidence presented at trial established the weapon used in the murder as well as the assault of Douglas Lewis, was a .380 caliber pistol.

These photographs were irrelevant to Petitioner's defense. At Petitioner's PCR evidentiary hearing, when asked on direct by PCR counsel, "Why did you put something into evidence if he [the solicitor] called every witness that you [trial counsel, Mr. Frick] wanted? What was so important about the pictures that you put in to lose last argument?" Trial counsel basically had no logical explanation. App. 660, L.22 - App. 661, L.16. And during cross by the Attorney General, App. 688, LL. 7-18.

Trial counsel rendered the ineffective assistance of counsel for admitting into evidence photographs that were not relevant to proving Petitioner's innocence. In State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999) and State v. Livingston, 327 S.C. 17, 488 S.E.2d 313 (1997), this Court ruled that the trial court erred by admitting a photograph of the crime victim because the photograph had no

probative value. See Langley, 334 S.C. at 648, 515 S.E.2d at 100 (concluding that photograph of murder victim was "not relevant to proving the guilt of appellant" because it was introduced solely to distance victim from dealing drugs occurring near murder scene and to neutralize testimony by State's witnesses regarding victim's drug use); Livingston, 327 S.C. at 20, 488 S.E.2d at 314 (finding that photograph of felony DUI victim taken shortly before her death was "irrelevant to any matter in issue"). Here, the photographs of a loaded 9-millimeter clip, box of cartridges and center console of van driven by shooting victim was absolutely in no way relevant to the Petitioner's innocence or defense.

Petitioner was prejudiced by counsel's entering said photographs, in that, he lost his right to the final closing argument to the jury. "When a defendant in a criminal case, offers no evidence, he is entitled to the final closing argument to the jury." State v. Gellis, 158 S.C. 471, 155 S.E. 849 (1930). "The right to open and close the argument to the jury is a substantial right the denial of which is reversible error." State v. Rodgers, 269 S.C. 22, 335 S.C. 808, 809 (1977).

II. Trial counsel was ineffective in failing to object to the solicitor's use of a "Golden Rule" argument in closing argument.

Trial counsel was ineffective in failing to object to various portions of the solicitor's closing arguments.

The "Golden Rule" argument, suggesting to jurors as it does that they put themselves in the shoes of one of the parties, is generally impermissible because it encourages the jurors to depart from neutrality and to decide the case on the basis of personal interest and bias rather than on the evidence." State v. Reese, 359 S.C. 260, 271, 597 S.E.2d 169, 175 (Ct. App. 2004), reversed in part on other grounds by 370 S.C. 31, 633 S.E.2d 898 (2006). The law is clear that ... it is improper to ask jurors to place themselves in the position of a party." Insurance Co. of North America, Inc. v. U.S. Gypsum, 870 F.2d 148, 154 (4th Cir. 1989). "A golden rule argument... is 'universally condemned because it encourages the jury to depart from neutrality and to decide the case on the basis of personal interest and bias rather than on evidence.'" Caudle v. District of Columbia, 707 F.3d 354, 359 (D.C. Cir. 2013)(quoting Granfield v. CSX Transp., Inc., 597 F.3d 474, 491 (1st Cir. 2010). Such arguments are "per se objectionable... in any" case. Arnold Eastern Air Lines, Inc., 681 F.2d 186, 199 (4th Cir. 1982). Here, the solicitor made similar improper argument in his closing, by his use of "you", basically asking the jurors to put themselves in the place of the victim or defendant.

In the solicitor's closing argument, he told the jury:

"It can be expressed, meaning you can walk up -- I could walk up to you and say, "I hate you and I'm going to kill

you," and I pull out a gun and kill you, that's expressed malice.
you can go somewhere to do something to somebody never intending to start with ~~and~~ to kill him, but if you're going to go there and commit a felony and in the course of that felony somebody dies at your hands then that's malice and murder.

App. 572, L. 25 - App. 572, L. 3; 7-11.

... it means that if you commit a violent crime, which murder and armed robbery are, and you do it while you're armed with a firearm or a gun or a knife, in this case a gun, that's a separate crime.

App. 574, LL. 3-6.

.... Let's talk larceny. That means you just steal from somebody ~~to get his money~~ you just take it.

App. 584, LL. 13-14.

With no objection from trial counsel, the jurors had this improper perspective in their minds throughout their deliberations.

The solicitor's use of "you" were improper remarks. Trial counsel's failure to object to these improper remarks was deficient and caused the jury to improperly consider all the evidence from the perspective of the victim or defendant rather than as impartial factfinders. This was a violation of petitioner's right to a fair trial and the effective assistance of trial counsel, requires a new trial.

III. Trial counsel was ineffective for his failure to ensure whether Petitioner desired to testify in his defense or not testify.

The trial court advised Petitioner on the evening of May 15, 2013, as Court was adjourned till the following morning, that the Petitioner had all night to decide whether he desired to testify or not. App. 538, L-24 - App. 539, L-2.

At 9:15 a.m. on May 16, 2013, Court begin, the record is silent as to the trial court advising Petitioner that he had the right to testify or not. Counsel for State and defense begin discussing charge, nothing concerning the Petitioner's right to testify or not. App. 543, L 22 - App. 545, L. 23.

Trial counsel was ineffective for failing to protect the Petitioner's right to testify or not.

The trial court did advise the Petitioner that "you have the right not to testify, but if you testified you didn't do it you have the better chance of them finding you not guilty if you didn't do it chances are. App. 626, LL 7-10. This after the trial - the jury all ready having rendered a verdict of guilty. Here, trial counsel failed to object and preserve this for appellate review. The failure to preserve an issue for appellate review constitutes ineffective assistance of counsel. McHam v. State, 404 S.C. 465, 475-76, 746 S.E.2d 41, 46-47 (2013). In McHam, trial counsel failed to make a contemporaneous objection after losing a motion in limine. Id. Appellate counsel filed an Anders brief. Id. The State attempted

attempted to argue that no prejudice existed because of the Anders review. Id. This Court rejected that argument, stating that under the Anders procedure, the Court reviews the entire record "for any preserved issues with potential merit." Id. The McIlam Court held that trial counsel's performance was deficient. Id. Just as in McIlam, trial counsel was ineffective for failure to preserve this issue for appeal constituted deficient performance.

Petitioner was prejudiced because he was denied his constitutionally guaranteed right to testify or not.

IV. Trial counsel was ineffective in failing to object to an accomplice liability charge being given because no evidence supported such a charge.

Trial counsel requested a "mere presence" charge be given and the State requested "accomplice liability" charge be given. Trial counsel did not object, during conference. App. 539, L.24- App. L.8. Nor did trial counsel object to the actual "accomplice liability charge being given. App. 599, LL. 10-17; App. 610, L.5- App. 613, L-13.

The jury sends a note out requesting the definition of accomplice law. App. 615, L.20- App. 616, L.2. The trial court reads the definition ~~to~~ of accomplice liability to the jury. App. 616, L. 11- App. 617, L. 22. Trial court did not object.

In the present, no evidence indicated anyone other than Jevel Davis was the shooter. There was absolutely no evidence that Petitioner was the shooter. In his opening statement, the solicitor stated that "Jevel Davis whipped out a .380 semiautomatic pistol and shot the victim(s), murdering Mr. Harry Edward Blakeney and wounding Douglas Lewis. App. 60, L.23- App. 61, L.1.

Although, co-defendants Prayon Truesdale, and Shaun McCrorey, along with Jevel Davis and Petitioner joined prior to Jevel Davis having pulled the gun on the victims, the only evidence was Jevel Davis was the shooter. In Wilds v. State, 407 S.C. 432, 756 S.E.2d 387 (Ct. App. 2014) the South Carolina Court of Appeals held, "although the jury may have had doubts about the testimony of Wilds co-defendants

an alternate theory of liability, such as accomplice liability "may not be charged merely on the theory the jury may believe some of the evidence and disbelieve other evidence. Wilds, at 407 S.C. at 439, 756 S.E.2d at 390 (quoting Barber v. State, 393 S.C. 232, 236, 712 S.E.2d 436, 439 (2011).

Petitioner was prejudiced by the accomplice liability charge because there was absolutely no evidence that Petitioner shoot the victim.

V. Trial counsel was ineffective for advising Petitioner that he need not take a plea to twenty years because he could beat the charges, in that, law enforcement had nothing on him.

Trial counsel advised Petitioner not to accept a twenty year plea offer because he could beat it. Counsel's inadequate assistance caused the nonacceptance of the plea and further proceedings led to a less favorable outcome. See Lafler v. Cooper, 132 S.Ct. 1376 (2012); see also Missouri v. Frye, 132 S.Ct. 1399 (2012).

Counsel's erroneous advice to not accept plea prejudiced Petitioner. Petitioner's detrimental reliance on counsel's advice resulted in a thirty (30) year day for day sentence. App. 627, LL. 2-4. The trial court even questioned Petitioner's educational background, when the State presented thirty-four (34) witnesses against Petitioner and not one grain of evidence in Petitioner's favor. App. 626, LL. 17-25.

The State's plea offer of twenty (20) years should be enforced. See Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999).

# CONCLUSION

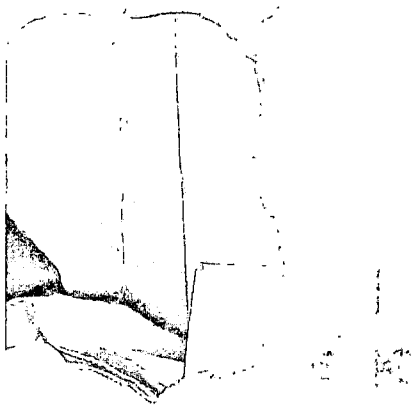
For the foregoing reasons, this Court should grant certiorari to hear Petitioner's issues, and grant him a new trial.

Respectfully Submitted,

Heyward R. Truesdale
#313568
Lieber Corr. Inst.
Cooper B-54
P.O. Box 205
Ridgeville, S.C. 29472
Pro se Petitioner

Heyward Rashard Truesdale #313568
Lieber Corr. Inst. Cooper B-54
P.O. Box 205
Ridgeville, S.C. 29472

Interagency Mail



Interagency Mail



Hon. Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, S.C. 29211